

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3713 OF 2021

The Principal Secretary, Tribal
Development Department and Ors.

...Petitioners

V/s.

Shrikrishna s/o. Dharampal Malwade
and Ors.

...Respondents

Appearances :

Shri. N.K. Rajpurohit, AGP for Petitioners.

Dr. Ramesh Asawa, Advocate for Respondents no.1, 3 to 7, 19 to 29.

**CORAM : DHIRAJ SINGH THAKUR AND
SANDEEP V. MARNE, JJ.**

DATED : 18 JULY 2023.

JUDGMENT (*Per : Sandeep V. Marne, J.*)

1. **Rule.** Rule made returnable forthwith. Petition is taken up for final hearing with the consent of the parties.

2. This petition is filed by the State Government challenging the judgment and order dated December 14, 2018 passed by the Maharashtra Administrative Tribunal (**Tribunal**) allowing Original Application No. 632/2016. The Original Application was instituted by 29 Original Applicants working on

various posts in Government Tribal Industrial Training Institutions seeking counting of their contractual services from the dates of their initial appointments for all purposes, except for monetary benefits. The Tribunal has allowed the Original Application and directed that the services rendered by them before the dates of their regularisation w.e.f. April 1, 2014 be counted for continuity in service and other consequential service benefits, except monetary benefits.

3. Briefly stated, facts of the case are that the Government of Maharashtra introduced a Scheme for imparting vocational training to tribal youths and issued Government Resolution (**GR**) dated August 23, 2004. The Scheme envisaged, *inter-alia*, setting up of new training schools as well as conversion of Ashram Schools into Vocational Training Institutes with the object of imparting vocational training to tribal students for creation of employment and self-employment opportunities for them. By that GR, 414 posts of teaching and non-teaching staff in such Training Institutes. The Scheme was to initially operated for 3 years.

4. In pursuance of the aforesaid Scheme, the State Government undertook an exercise of appointing teaching staff on contract basis in various Government Tribal Industrial Training Institutes. Accordingly, 29 respondents herein came to be engaged on contract basis from various dates on various teaching and non-teaching posts so created by the GR dated

August 23, 2004. The appointments were made on contract basis for a period of 11 months. After grant of technical breaks, the tenure of their appointments was extended from time to time. The operation of the Scheme was extended from time to time.

5. The State Government took a decision in the year 2014 to accord permanency to the Scheme introduced in the year 2004 and accordingly G.R. dated July 8, 2014 was issued *inter-alia* directing that the 414 posts which were earlier being filled on contract basis be filled by granting 6th Pay Commission Scales. It was further directed that the existing incumbents holding the posts on contract basis be regularised and the remaining vacancies be filled by direct recruitment. In pursuance of the G.R. dated July 8, 2014, the State Government regularised the services of Respondents w.e.f. April 1, 2014. Regularisation was however effected prospectively with a specific condition that the earlier services upto March 31, 2014 shall not be counted for any purposes.

6. Respondents instituted Original Application No. 632/2016 praying for counting of the contractual services rendered by them prior to April 1, 2014 for all purposes except monetary benefits. The Tribunal has proceeded to allow the Original Application by judgment and order dated December 14, 2018, which is the subject matter of challenge in the present petition.

7. Appearing for Petitioner-State Government Mr. Rajpurohit, the learned Assistant Government Pleader would submit that the Tribunal has erroneously directed counting of past services though the benefit of regularisation was granted to the Respondents on a specific condition that the past services would not be counted for any purposes. He would further submit that the Tribunal has erroneously relied upon the judgment of the Division Bench of this Court in **Sachin Ambadas Dawale & Ors. V/s. The State of Maharashtra & Anr.**, Writ Petition No.2046/2010 decided on October 19, 2013. He would submit that there is a marked difference between the factual position in *Sachin Ambadas Dawale* (supra) and the present case. That in *Sachin Ambadas Dawale*, contractual appointments were made against regularly sanctioned posts on account of failure of the MPSC in filling up the posts on regular basis. In the present case, the initial appointments of Respondents were not against regularly sanctioned posts. That the posts got sanctioned only from April 1, 2014 and prior to that date, they were to be filled only on contract basis. Mr. Rajpurohit would further rely upon clarificatory order dated July 24, 2017 passed by the Division Bench in *Sachin Ambadas Dawale* to buttress his contention that the said judgment cannot be cited as a precedent for regularisation of services of contractual employees. He would further submit that, the Division Bench of this Court in **Mahesh Madhukar Wagh and Others V/s. State of Maharashtra & Others**

2019 SCC Online Bom 693 subsequently declined the benefit of regularisation to an Assistant Professor appointed for specified period. He would also place reliance on judgment of the Division Bench of this Court in **Atul Murlidharrao Adhao V/s. The Deputy Director, Vocational Education & Training Regional Officer & Anr.**, Writ Petition No. 3943/1997 decided on March 5, 2007 in support of his contention that past contractual services, eventhough followed by regularization, cannot be counted for any purposes .

8. *Per-contra*, Dr. Asawa the learned counsel appearing for Respondents would oppose the petition and support the order passed by the Tribunal. He would submit that the Tribunal has not committed any jurisdictional error warranting any interference at the hands of this Court. That the Tribunal has rightly relied upon the judgment of this Court in ***Sachin Ambadas Dawale*** where it was directed to regularise services of Petitioner wherein from the dates of their initial contractual appointments. He would pray for dismissal of the petition.

9. Rival contentions of the parties now fall for our consideration.

10. The short issue that arises for our consideration is whether contractual services rendered prior to regularisation can be computed for any service benefits? The Tribunal has restricted

counting of contractual services for all purposes except for monetary benefits. The purport of the Tribunal's order is that the contractual services would be computed for various other purposes such as qualifying services for pension, continuity of service, pay-fixation, eligibility for promotion etc. However the Respondents would not receive actual difference or arrears of pay in respect of the contractual services.

11. The State Government has assailed the order of the Tribunal essentially on a premise that the case of the Respondents is altogether different than that of ***Sachin Ambadas Dawale***, on which reliance is placed by the Tribunal. It is the contention of the State Government that the only reason for allowing the O.A. by the Tribunal is reliance on the judgment of ***Sachin Ambadas Dawale***.

12. While we do agree with the contention of the State Government that there is a difference between the relief that was sought in ***Sachin Ambadas Dawale*** than the one sought by the Respondents in their Original Application. ***Sachin Ambadas Dawale*** was filed seeking regularisation of services by contractual Lecturers in Government Polytechnic. Thus when the petition was filed, the Petitioners in ***Sachin Ambadas Dawale*** were yet to be regularized. As against this, the Respondents were already regularised in services from April 1, 2014 when they instituted Original Application before the Tribunal. The issue about Respondents' entitlement for regularisation was not involved

before the Tribunal. The Tribunal was only required to decide whether the past contractual services could be counted for various purposes except monetary benefits. The limited similarity that the Tribunal has drawn with the case of *Sachin Ambadas Dawale* is the date from which the benefit of regularisation was to be granted.

13. In *Sachin Ambadas Dawale*, while partly allowing the petition, this Court issued following directions :

“20. In view of the above, the writ petition needs to be partly allowed.

21. The writ petition is partly allowed.

22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed three years' service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners who are in continuous employment till 15.10.2013 shall be continued in service as regular employees.

However, in the facts and circumstances of the case, we direct that the petitioners shall be entitled to regular salary from 1 November, 2013 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to state that since the petitioners' services are regularized, they shall be entitled to the continuity in service for all other purposes except monetary purposes from the date of their first-appointment.”

14. Thus in *Sachin Ambadas Dawale* this Court directed regularisation of services of Petitioners therein with a further direction that they would be entitled to continuity in service for all other purposes, except monetary purposes from the dates of

their first appointments.

15. The State Government has attempted to draw a distinction between the Petitioners in *Sachin Ambadas Dawale* and the Respondents. In *Sachin Ambadas Dawale*, regular recruitment against sanctioned posts of Lecturers in Government Polytechnic was halted on account of decision by the State Government to ban recruitment. Since Lecturers were required in Government Polytechnic, it was decided to appoint Lecturers on contract basis against regularly sanctioned posts, which were lying vacant because of MPSC's inability to fill them. Since contractual appointments were made on regularly sanctioned posts, that too after subjecting the candidates to a selection process, this Court directed regularisation of services of Petitioners therein.

16. In the present case, the stand of the State Government is that the initial contractual appointments of Respondents were not against regularly sanctioned posts. This is the moot issue involved in the Petition. Perusal of the impugned Judgment of the Tribunal does not reflect that this issue is addressed by the Tribunal. The State Government is essentially aggrieved by Tribunal's failure to answer this issue, which was specifically raised by the State Government in its Affidavit-in-Reply filed before the Tribunal. In ordinary course, we would have remanded the Original Application to the Tribunal for decision on this issue. However considering the limited controversy involved as also pendency of the litigation since the

year 2016, we deem it appropriate to deal with this issue ourselves.

17. We accordingly proceed to examine the issue of nature of posts against which initial contractual appointments of Respondents were made. As observed above, the GR dated August 23, 2004 which kickstarted the Scheme for imparting vocational training to tribal students, created 414 posts of teaching and non-teaching staff. Para-4 of the G.R. reads thus:

“(४) योजना केव्हापासून अंमलात येईल :-

वरील योजनांची अंमलबजावणी सन २००४-०५ या आर्थिक वर्षापासून करण्यात यावी व हा कृती कार्यक्रम ३ वर्षांच्या कालावधीत कालबद्ध पद्धतीने टप्प्याटप्प्याने राबविण्यात यावा. या योजनेसाठी लागणारी परिशिष्ट-१२ मध्ये दर्शविण्यात आलेली विविध अभ्यासक्रमाशी संबंधित पदे निर्माण करण्यास देखील शासन मंजूरी देत आहे.

(५) योजनेचे अंमलबजावणी प्राधिकारी :-

परिच्छेद-१ मध्ये नमूद केलेल्या १२ योजनांपैकी अनु.क्र.२ येथील योजना आदिवासी विकास विभागाकडून उच्च व तंत्र शिक्षण विभागाच्या मार्फत राबविण्यात येईल.तर अनु.क्र. १० येथील योजना आदिवासी विकास विभागामार्फत राबविली जाईल. उर्वरित सर्व ८ योजना व्यवसाय शिक्षण व प्रशिक्षण संचालनालयाकडून आदिवासी विकास विभाग आणि उच्च व तंत्र शिक्षण विभागाच्या सल्ल्यानुसार राबविल्या जातील. तथापि, योजनांची अंमलबजावणी करताना ज्या ठिकाणी प्रशासकीय व तांत्रिक मान्यतेची गरज भासेल त्या ठिकाणी उच्च व तंत्र शिक्षण विभागामार्फत आदिवासी विकास विभागाची मान्यता घेण्यात यावी.

(६) योजनेसाठी निधीची उपलब्धता :-

या योजनांच्या अंमलबजावणीसाठी आदिवासी उपयोजनेतून जिल्हास्तरीय नियतव्ययामधून, केंद्र शासनाकडून प्राप्त होणा-या भारतीय संविधानाच्या अनुच्छेद २७५(१) खालील तरतूदीतून, विशेष केंद्रीय सहाय्यातून तसेच राज्यस्तरीय नियतव्ययामधून उपलब्ध करून देण्यात यावा व तो खाली नमूद केलेल्या लेखाशिर्षाखाली खर्च टाकून संबंधित आर्थिक वर्षात प्राप्त होणाऱ्या मंजूर तरतूदीतून भागविण्यात यावा. सन २००४-०५ या वर्षी राबविण्यात येणाऱ्या योजनांचा खर्च शासन निर्णय आदिवासी विकास विभाग क्र.बीयुडी-२००४/नविन बाब/प्र.क्र.४३/का.७, दिनांक २९ जून, २००४ अन्वये उपलब्ध करून

दिलेल्या तरतूदीतून भागविण्यात यावा. या संदर्भातील तपशीलवार आदेश स्वतंत्रपणे निर्गमित करण्यात येतील.

(७) अंदाजपत्रकीय शिर्ष :- या योजनेंतर्गत समाविष्ट करण्यात आलेल्या कार्यक्रमांवर होणारा खर्च

“ मागणी क्र.टि-४,

लेखाशिर्ष-२२३०-कामगार व सेवायोजना-

पंचवार्षिक योजनांतर्गत योजना

जनजाती क्षेत्र उपयोजना

०३-प्रशिक्षण

००३-कारागिर व पर्यवेक्षक यांचे प्रशिक्षण

०१-औद्योगिक प्रशिक्षण संस्था

(००)(०१) - राज्य योजनांतर्गत योजना (२२३००७३४)

(०१)(०२) विशेष केंद्रीय सहाय्य योजना (२२३००७७३)

(०१)(०३) भारतीय संविधानाच्या अनुच्छेद २७५ (१) अन्वये केंद्रीय

सहाय्य (२२३० १०२७)”

Para-4 of the GR dated August 23, 2004 can be translated as under :

[4] Date of commencement of the Scheme-The aforesaid Schemes be implemented from the Financial Year 2004-05 and this action plan be implemented for three years in a time bound manner. **The State Government has also granted approval for creation of posts needed for implementation of the Scheme for various curriculum as indicated in Annexure-12.**

(emphasis added)

18. Thus under Para 4 of the GR dated August 23, 2004, approval was granted for creation of posts as per Annexure-12. Under Annexure-12 to the G.R., total number of 414 new posts were created for implementation of the Scheme. Though the G.R. directed that the Scheme was to be implemented for a period of three years, it is nowhere directed that the posts are temporary in nature. There is no denial to the

fact that the Scheme came to be continued beyond the period of three years and the posts sanctioned by G.R. dated August 23, 2004 also continued to be operation even beyond period of three years.

19. The State Government subsequently decided to implement the Scheme on permanent basis. In pursuance of the said decision for permanently implementing the Scheme, G.R. dated July 8, 2014 was issued to regulate 414 posts created vide G.R. dated August 23, 2004. It would be necessary to reproduce relevant portion of the G.R. dated July 8, 2014, which reads thus :

महाराष्ट्र शासन
आदिवासी विकास विभाग
शासन निर्णय क्रमांक : बैठक २०१२/प्र.क्र.१४३/का-१२
मंत्रालय, मुंबई ४०० ०३२
तारीख : ८ जुलै, २०१४

शासन निर्णय.—

प्रस्तावनेत नमूद केल्यानुसार आदिवासी रोजगाराभिमुख व्यवसाय शिक्षणाचे सार्वत्रिकरण योजनेच्या संदर्भात दि.२३.०२.२०१४ रोजी मंत्री मंडळ बैठकीत पुढीलप्रमाणे नमूद केलेल्या बाबीस मान्यता देण्यात आली आहे. ह्यास अनुसरून शासन खालीलप्रमाणे मान्यता देत आहे.

(१) “आदिवासी रोजगाराभिमुख व्यवसाय शिक्षणाचे सार्वत्रिकरण” ही योजना कायमस्वरूपी सुरु ठेवावी.

(२) या योजनेअंतर्गत निर्माण केलेल्या विविध संवर्गातील एकूण ४१४ पदांना कंत्राटी तत्वाऐवजी शासनाच्या नियमित असलेल्या सहाय्या वेतन आयोगानुसार वेतनश्रेणी लागू करण्यात येत आहे. (परिशिष्ट “अ”नुसार)

(३) उपरोक्त एकूण ४१४ पदांपैकी विविध संवर्गातील रिक्त असलेली उर्वरित पदे सरळ सेवेने व शासनाच्या प्रचलित कार्यपद्धतीने भरण्यात यावी.

(४) शासन निर्णय दिनांक २३.०८.२००४ अन्वये आदिवासी विकास विभागाने या योजनेखाली निर्माण केलेल्या विविध संवर्गातील एकूण ४१४ पदांपैकी सध्या कार्यरत असलेल्या कर्मचाऱ्यांची सेवा दिनांक ०१.०४.२०१४ पासून नियमित करण्यात यावी.

(५) या योजनेतून विविध संवर्गातील एकूण ४१४ पदांकरीता येणाऱ्या वेतन व इतर भत्त्यांकरीता रु.१३,७८,६२,०००/- (तेरा कोटी अठ्ठ्याहत्तर लक्ष बासस्ट हजार) इतक्या आवर्ती खर्चास मान्यता देण्यात येत आहे.

२. याबाबतचा खर्च मागणी क्र.टी-५, लेखाशिर्ष-२२३० कामगार व सेवायोजन, पंचवार्षिक योजनांतर्गत योजना, जनजाती क्षेत्र उपयोजना, ०३-प्रशिक्षण, ७९६-जनजाती क्षेत्र उपयोजना, (१)-जनजाती क्षेत्र उपयोजनांतर्गत योजना, राज्य योजनांतर्गत योजना, (०१)(०१) औद्योगिक प्रशिक्षण संस्था, आदिवासी भागातील औद्योगिक प्रशिक्षण संस्थांचा विस्तार (२२३००७६४) या लेखाशिर्षाखाली खर्ची टाकण्यात यावा.

३. सदर शासन निर्णय हा उच्च व तंत्र शिक्षण विभागाच्या सहमतीने तसेच वित्त विभागाच्या अनौपचारिक संदर्भ क्र.टी ४७२/व्यय-५, दि. ०७.०७.२०१४ नुसार निर्गमित करण्यात येत आहे.

४. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१४०७१०१४५०३७९४२४ असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

20. The State Government has provided English translation of the G.R. dated July 8, 2014 as under:

Government Resolution :

As mentioned in the preface, in connection with the Universalisation of Tribal Job Oriented Vocational Education Scheme, approval has been granted to the below mentioned points in the meeting of the Hon'ble Cabinet

held on the date – 23/02/2014. In pursuance thereof, the Government grants the approval as under.

- 1) The 'Universalisation of Tribal Job Oriented Vocational Education Scheme' should be continued permanently.
 - 2) The regular pay scale as per the Sixth Pay Commission of the Government is being made applicable to total 414 posts of different cadre created under this Scheme instead of contract basis (As per Appendix 'A').
 - 3) The remaining vacant posts of different cadre from out of the aforesaid total 414 posts should be filled by direct recruitment and by prevailing procedure of the Government.
 - 4) The service of the employees, from out of the total 414 posts presently working in different cadre created under this Scheme by Tribal Development Department under Government Resolution dtd. 23/08/2004 should be regularised from the date – 01/04/2014.
 - 5) Approval for recurring expenditure of Rs.13,78,62,000/- (Thirteen Crores Seventy Eight Lakhs Sixty Two Thousand) is granted for the pay and other allowances to be incurred for total 414 posts of different cadre from this scheme.
-
- 2) The expenditure in respect thereof to be incurred should be debited under accounts head viz. Demand No.T-5, Accounts head -2230 Employees ad Employment, Scheme under Five Year Plan, Tribal Area Sub Scheme, 03-Training, 796-Tribal Area sub Scheme (01)-Scheme under Tribal Area Sub Scheme-Scheme under State Scheme, (01)(01) Industrial Training Institute, Expansion of Industrial Training Institutes in Tribal areas (2230 0764).
 - 3) The said Government Resolution is issued with the concurrence of the Higher and Technical Education Department as well as under the unofficial reference No.472/Expenditure – 5, dtd 07.07.2014 of Finance Department.
 - 4) The said Government Resolution has been made available on the website www.maharashtra.gov.in of Government of Maharashtra and its code number is 201407101450379424. This order is issued by

attesting the same with digital signature.

By order and in the name of the Governor of Maharashtra.

21. Perusal of the G.R. dated July 8, 2014 would indicate that the said GR has not 'created' or 'sanctioned' any posts. The 'creation' of 414 posts was by virtue of GR dated August 23, 2004. The only decision that the State Government took by issuance of G.R. dated July 8, 2014, was to fill up the said 414 posts on regular basis instead of filling them on contractual basis. Thus, we do not agree with the contention raised by Mr. Rajpurohit that the 414 posts were 'created' or 'sanctioned' by G.R. dated July 8, 2014. On the contrary, para-4 of the G.R. dated August 23, 2004, which we have reproduced above, clearly uses the words 'creation of posts'. We therefore hold that the 414 posts were created by the State Government by G.R. dated August 23, 2004 and that they were not created by G.R. dated July 8, 2014. The only decision that the State Government took on July 8, 2014 was to fill up the already created and sanctioned posts on regular basis. Undeniably, Respondents' initial contractual appointments were made against 414 posts created by GR dated August 23, 2004. We have therefore no hesitation in holding that the initial contractual appointments of Respondents were on regularly sanctioned posts.

22. There is no denial by the State Government to the fact that initial recruitment of the Respondents was made

pursuant to their participation in the selection process. They are not back door entrants. They fulfilled the requisite eligibility criteria for the posts on the dates of their initial engagements. The State Government itself has regularised the services of Respondents w.e.f. April 1, 2014. Since their initial contractual appointments were against regularly sanctioned posts, after participating in selection process and after possessing requisite eligibility criteria, the initial contractual appointments were actually regular for all practical purposes. We therefore do not find any error being committed by the Tribunal in directing the said contractual services to be counted for all purposes, except for monetary benefits.

23. Mr. Rajpurohit has strenuously urged before us that Condition No.3 of regular appointment orders issued in favour of Respondents on September 26, 2014 contained a specific stipulation that their past contractual services would not be counted for any purposes. It is the submission of Mr. Rajpurohit that, Respondents accepted regular appointments subject to the said conditions and cannot now be permitted to take a *volte-face* and demand counting of past services. In this regard, a useful reference can be made to the judgment of the Apex Court in **Central Inland Water Transport Corporation Ltd. V/s. Brojo Nath Ganguly (AIR 1986 SC 1571)** wherein the Apex Court has held as under :

“....Article 14 of the Constitution guarantees to all persons

equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power....it will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.”

24. We are therefore of the view that Condition No.3 in the appointment order dated September 26, 2014 cannot prevent Respondents from claiming counting of past contractual services.

25. Reliance of Mr. Rajpurohit on clarificatory order passed by the same Division Bench on April 27, 2017 which delivered judgment in ***Sachin Ambadas Dawale*** is misplaced. By that clarificatory order, the Division Bench has clarified that the judgment does not lay down a ratio that the persons who were appointed on purely contractual or temporary basis without following due selection process would also be entitled to regularisation of their services. In the present case, the Respondents never sought relief of regularisation of services since they were already regularised. Furthermore, the initial appointments of the Respondents were against sanctioned posts after following due process of selection. Therefore, reliance of

Mr. Rajpurohit on the clarificatory order dated April 27, 2017 in ***Sachin Ambadas Dawale*** is completely misplaced.

26. Mr. Rajpurohit has placed strong reliance on the judgment of the Division Bench of this Court in ***Atul Murlidharrao Adhaoo*** (supra). In that case, the Petitioner therein was appointed on December 5, 1992 as Craft Instructor (Electronics) on a temporary basis for a period of three months. He approached the Tribunal which directed his continuity in service till appointment of regular incumbents. The Petitioner therein was later removed from service on the ground of the posts being filled up by regular appointments. He approached the Tribunal seeking relief of participation in regular selection process, which was dismissed. The High Court while admitting the petition, granted interim relief which enabled his continuance in service. During pendency of the petition, he came to be regularised w.e.f March 8, 1999. It is in the light of these peculiar facts that the Division Bench of this Court declined the benefit of counting of past services. In our view, the order passed by this Court in ***Atul Murlidharrao Adhaoo*** is thus clearly distinguishable.

27. Mr. Rajpurohit has also placed reliance on the judgment of Division Bench of this Court in ***Mahesh Wagh*** (supra). In that case, the engagement was made on temporary

posts and noting that fact, this Court declined the benefit of regularisation of service by distinguishing its judgment in ***Sachin Ambadas Dawale***. In the present case, the initial appointments are found to have been made on regularly sanctioned posts. Therefore, the judgment in ***Mahesh Wagh*** is clearly distinguishable.

28. Apart from relying on judgment in *Sachin Ambadas Dawale*, the Tribunal, in our view' could have granted relief in favour of Respondents on the basis of provisions of the Maharashtra Civil Services (Pension) Rules (**Pension Rules**). Rule 30 deals with the commencement of qualifying service for pension and provides thus:

“30. Commencement of qualifying service.- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

29. Thus, under Rule 30, qualifying service of a Government Servant appointed against a substantive post commences from the date he takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity.

30. Rule-33 of the Pension Rules reads thus :

“33. Service rendered under Government followed without interruption by confirmation counts in full as service qualifying for

pension.-

A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.

Note.- The benefit of above rule should also be extended to Government servants who have rendered service in temporary post in the former Civil Supplies Department including those re-employed after the break, provided they agree to refund the terminal gratuity, if any, received by them on their retrenchment from the former Civil Supplies Department (in order to avoid hardship, the gratuity may be refunded in monthly instalments not exceeding rupees twenty). Competent authorities are authorised to condone where necessary, breaks not exceeding 3 years. In cases where break exists, the terminal gratuity referred to above should be refunded within three months from the date of the order of the competent authority condoning the break and the right to count the service under the above rule does not accrue until the gratuity is wholly refunded. The condonation should be postponed until the Ex-Civil Supplies Department personnel actually pass the examination, if any, required for confirmation and are actually confirmed. The benefit of condonation of break should be allowed only in those cases in which breaks have occurred on account of discharge from service for want of post and not on any other ground, e.g., voluntary resignation etc. and in computing the period of break, the terminal leave availed of by the persons concerned, should also be taken into account. The leave salary is not, however, refundable.”

31. Thus, under Rule-33, a Government Servant holding a substantive post on the date of his retirement is entitled to count the entire temporary or officiating service rendered under Government which is followed without interruption by confirmation. Thus even under the provisions of Rule 30 and Rule 33 of the Pension Rules, the Petitioner’s

past services are required to be computed for the purpose of qualifying service for pension. Though the Tribunal has not placed reliance on the provisions of Rules 30 and 33 of the Pension Rules while allowing the O.A., we are of the view that the Respondents are otherwise entitled to the benefit of computation of past contractual services, as qualifying service for pension under the provisions of Rules 30 and 33 of the Pension Rules.

32. Mr. Rajpurohit would seek to draw a distinction in the present case submitting that provisions of Rules 30 and 33 of the Pension Rules have no application to present case. He would invite our attention to the fact that Respondents were given breaks in service from time to time during their contractual services. We find such breaks to be artificial ones. Such breaks were not on account of discontinuation of the Scheme or for non-sanctioning of posts. The Scheme as well as sanction for the posts continued for the entire period till the Respondents were regularised in services on April 1, 2014. In such circumstances, technical breaks of few days given to Respondents during two spells of their contractual services are required to be ignored. In this regard, reliance can also be placed on the provisions of Rule 48 of the Pension Rules which provides for condonation of such breaks in service. Rule-48 reads thus :

“48. **Condonation of interruption in service.**-(1) The

appointing authority may, by order, condone interruptions in the service of a Government servant :

Provided that -

- (a) the interruption have been caused by reasons beyond the control of the Government servant :
- (b) the total service pensionary benefit in respect of which will lost, is not less than five years duration, excluding one or two interruptions, if any: and
- (c) the interruption including two or more interruptions, if any does not exceed one year.

Provided further that, such service of the Government servant shall be counted as qualified service for the purposes of Rule 33.]

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service.”

33. Thus in our view the technical breaks given to the Respondents are otherwise required to be condoned.

34. Resultantly, we do not find any error in the impugned judgment and order passed by the Tribunal. The Tribunal has granted limited relief of counting of past contractual services for all purposes except monetary benefits.

There is no jurisdictional error committed by the Tribunal in granting the said relief so as to warrant our interference while exercising power of superintendence under the provisions of Articles 226 or 227 of the Constitution of India.

35. The Writ Petition, being devoid of merits, deserves to be dismissed and is dismissed without any orders as to costs. Rule is discharged.

**NEETA
SHAILESH SAWANT (SANDEEP V. MARNE, J.) (DHIRAJ SINGH THAKUR, J.)**

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.07.25
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